

STEVEN AND MARY J. LUTZ

IBLA 79-88 Decided February 28, 1979

Appeal from decision of the California State Office, Bureau of Land Management, rejecting high bids tendered for two parcels of land at a sale of competitive oil and gas leases. CA-5280 and CA-5281.

Reversed.

1. Oil and Gas Leases: Competitive Leases—Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale on the basis of an inadequate bonus where the rejection has a reasonable basis in fact.

2. Oil and Gas Leases: Competitive Leases

Where high bids tendered at a competitive oil and gas lease sale, which are not clearly spurious or irresponsible, are rejected solely on the basis of a conclusory statement by an official of the Geological Survey that the bids are inadequate, and no factual basis for that conclusion appears in the case record, and a request for supporting documentation has been refused, the decision will be reversed as arbitrary and capricious.

APPEARANCES: Steven and Mary Lutz, pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Steven and Mary Lutz have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated November 13, 1978, which rejected their high bids (CA-5280 and

CA-5281) for two of the parcels (numbers 7 and 8) ^{1/} in a competitive oil and gas lease sale held on September 6, 1978.

The decision indicated that the U.S. Geological Survey, the Secretary of the Interior's expert in matters concerning geologic evaluation of tracts of land for competitive leasing, had determined that their bids of \$3.33 per acre were inadequate, based on a "comparable sales analysis" which established a fair market value of \$20 per acre for these tracts. The record does not contain any supporting data from the Survey to document the comparable sales relied upon for this conclusion.

Appellants contend that the sale announcements did not specify any minimum bids per acre and the values were to be established by the interested bidders. They conclude that since they were the only bidders for parcels 7 and 8, the leases should be awarded to them. Of itself, this is insufficient reason to reverse the BLM decision.

[1] The Secretary of the Interior, or his authorized delegate, clearly has the authority to reject a high bid at a competitive oil and gas lease sale on the basis of an inadequate bonus. Section 17 of the Mineral Leasing Act, as amended, provides in part:

If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary * * *. [Emphasis added.]

30 U.S.C. § 226(b) (1970). This right to reject competitive oil and gas lease offers is recognized in the regulations at 43 CFR 3120.3-1. This Board has repeatedly upheld the authority of the Secretary or his delegate to reject bids for inadequacy of the bonus offered provided the rejection has a reasonable basis in fact. Gerald S. Ostrowski, 34 IBLA 254 (1978); Frances J. Richmond, 29 IBLA 137 (1977); Yates Petroleum Corporation, 27 IBLA 224 (1976); H & W Oil Co., Inc., 22 IBLA 313, 315 (1975).

[2] Where high bids which are not clearly spurious or irresponsible are rejected solely on the basis of a statement by an official that the bids are inadequate and no basis for that conclusion appears in the case records, the decision will be set aside and

^{1/} Parcel 7 comprises 40 acres, and Parcel 8, 100 acres.

the cases remanded for compilation of a proper record and readjudication of the acceptability of the bids. Frances J. Richmond, supra at 304; Arkla Exploration Co., 25 IBLA 220 (1976). As was the situation in the cited cases, it is not apparent on the face of the record in the present case that the bids are clearly spurious or unreasonable. Recognizing this, the Chief, Mineral Section, Branch of Lands and Minerals Operations of the California State Office, BLM, addressed a memo, dated October 3, 1978, to the Conservation Manager, Western Region, Geological Survey, requesting a new report in support of several of the Survey's recommendations. The memo reads as follows:

Subject: Inadequate High Bids for Parcels 1, 4, 7, 8,
and 10, Competitive Oil and Gas Lease Sale Held
September 6, 1978

A copy of your September 20, 1978, Memorandum is enclosed for ready reference. We have no objection to rejecting the high bids for Parcels 1, 4, 7, 8, and 10, if they are inadequate. However, before a decision rejecting the bids can be issued, the case records must contain a factual basis for the determination that the bids are inadequate. You have given no basis at all for inadequate bids for Parcels 7, 8, and 10. See Francis J. Richmond, 24 IBLA 303 (1976), copy enclosed. You have given some reasons for a basis for an inadequate bid for Parcel 1; however, there is insufficient elaboration. See Gerald S. Ostrowski, 34 IBLA 254 (1978), copy enclosed. Your reasons for an inadequate bid for Parcel 4 also has insufficient elaboration. A good history is given, but not projection into the future is given. An estimate of the future production should be added to the history and that production correlated to the \$40 per acre value you are giving the parcel.

Under these circumstances, we would appreciate a new report from your office that will give us a factual basis for our records that will support rejection decisions for Parcels 1, 4, 7, 8, and 10.

No written response was forthcoming from the Geological Survey. Instead, appended by staples to the file copy of BLM's memo was the following handwritten note: "Per conversation of Walt Holmes, Chief, Branch of Lands and Minerals Operations, BLM, and Henry Cullen of the Office of the Conservation Manager, Western Region, USGS, Menlo Park, NO further report will be made by USGS." (Emphasis in original.)

Subsequently, without further information of any kind, BLM issued its decision of November 13, 1978, rejecting appellant's high bids for Parcels 7 and 8. This was clearly improper. Knowing, as it did, that

evidence and justification is required in support of a Survey recommendation to reject a high bid, and recognizing that Survey's recommendation was not acceptable in the form in which it was presented, and having been refused any further information from Survey, to then simply adopt the recommendation and reject the bids was, on its face, an arbitrary and capricious act.

As the Geological Survey has refused any further information, we conclude that a remand of the case to BLM for further documentation is unwarranted in this instance.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Edward W. Stuebing
Administrative Judge

I concur:

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I would remand to BLM for a further attempt to obtain the necessary documentation. If appropriate information is not forthcoming, I concur that the lease should issue, absent any contrary considerations.

Joseph W. Goss
Administrative Judge

